

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

TOMAS RIVERA

(b) County of Residence of First Listed Plaintiff Chester County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address and Telephone Number)

Patrick Timoney, Devine Timoney Law Group, 600 W Germantown Pike  
Suite 400, Plymouth Meeting, PA 19462

## DEFENDANTS

DIVERSIFIED MACHINE SYSTEMS INC

County of Residence of First Listed Defendant El Paso County  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☐ 6 Multidistrict Litigation - Transfer  
☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

28 U.S.C. section 1332

Brief description of cause

Product Liability - Defective Machinery

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

20,000,000.00

CHECK YES only if demanded in complaint

JURY DEMAND:

☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

01/29/2019

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

FEB - 1 2019

TJS

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

18

4864

## DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: Tomas Rivera, 10 Karen Drive, Malvern, PA 19355

Address of Defendant: Diversified Machine Systems, Inc. 1068 Elkton Dr., Colorado Springs, CO 80907

Place of Accident, Incident or Transaction: McClarín Plastics, 15 Industrial Dr., Hanover, PA 17331

## RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge: \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- |  |                              |  |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?            | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.DATE: 01/29/2019

67020

Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable)

CIVIL: (Place a ☒ in one category only)

## A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☐ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☐ 11. All other Federal Question Cases

(Please specify): \_\_\_\_\_

## B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify): \_\_\_\_\_
- ☒ 7. Products Liability
- ☐ 8. Products Liability - Asbestos
- ☐ 9. All other Diversity Cases

(Please specify): \_\_\_\_\_

## ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Patrick C. Timoney, counsel of record or pro se plaintiff, do hereby certify:☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:☐ Relief other than monetary damages is sought.DATE: 01/29/2019

67020

Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

FEB - 1 2019

14400  
TJS  
IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TOMAS RIVERA  
10 KAREN DRIVE  
MALVERN, PA 19355  
Plaintiff

v.

DIVERSIFIED MACHINE SYSTEMS INC  
1068 ELKTON DRIVE  
COLORADO SPRINGS, CO 80907  
Defendant

CASE NO.: 19 486

JURY TRIAL DEMANDED

FILED

FEB 01 2019

COMPLAINT

KATE B. KIMMAN, Clerk  
By \_\_\_\_\_ Dep. Clerk

Plaintiff, Tomas Rivera, by and through undersigned counsel, hereby demands judgment against the above-named Defendants, and states as follows by way of complaint:

**PARTIES**

1. Plaintiff, Tomas Rivera, is a citizen of the Commonwealth of Pennsylvania, residing at 10 Karen Drive, Malvern, PA 19355.
2. At all times relevant hereto, Tomas Rivera was employed by McClarin Plastics LLC., located at 15 Industrial Drive, Hanover, PA 17331.
3. Defendant Diversified Machine Systems Inc. (hereinafter "DMS") is a corporation organized and existing under the laws of the State of Colorado with a principal place of business at 1068 Elkton Drive, Colorado Springs, CO 80907.
4. DMS designs, manufactures, and sells three axis and five axis CNC routers and machining centers which it offers for sale and/or distributes throughout the United States, including to businesses located in the Commonwealth of Pennsylvania.
5. DMS is the successor corporation to a Texas Corporation with the same name, Diversified Machine Systems Inc., (hereinafter "DMS Texas") located in Gainesville, Texas.

6. On or about December 27, 2007, DMS Texas was merged into DMS.

7. DMS, formerly DMS Texas, is the successor in interest to Motionmaster Inc, a California Corporation that was dissolved on or about December 12, 2006.

8. At or about the time of its dissolution in 2006, substantially all of the assets, business operations and employees of Motionmaster Inc. were transferred to DMS Texas and were subsequently transferred from DMS Texas to DMS in of about December of 2007.

9. At or about the time of its dissolution in 2006, the website and customer lists of Motionmaster Inc. were transferred to DMS Texas, and Subsequently from DMS Texas to DMS.

10. At of about the time of its dissolution in 2006 the product lines previously manufactured and/or sold by Motionmaster Inc. were transferred to DMS Texas and subsequently to DMS.

11. From that time that Motionmaster Inc. ceased business operations through to the present, DMS Texas and then DMS have and continue to actively maintain and operate the Motionmaster webpage at the web address "motionmaster.com."

12. From that time that Motionmaster Inc. ceased business operations through to the present, DMS Texas and then DMS have represented and continue to represent to former Motionmaster Inc. customers and to the public that it is "the official service provider for Motionmaser machines."

13. DMS, by and through it employees has represented to Motiomaster machine owners and to potential customers that the DMS product line is the successor to the Motionmaster Inc. product line.

14. Motionmaster Inc. designed, manufactured and sold the subject 5 axis single table CNC machine (hereinafter "the CNC") that caused injuries to the Plaintiff, Tomas Rivera with the intention that the CNC would be used in Pennsylvania by companies located in Pennsylvania.

### **JURISDICTION AND VENUE**

15. Jurisdiction is based on 28 U.S.C. §1332(a)(1) as this action involves a controversy between citizens of different states and the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs.

16. Venue is proper in this district based on 28 U.S.C. §1391(a) in that the Eastern District of Pennsylvania is a where defendant DMS is subject to personal jurisdiction.

### **FACTS**

17. On April 23, 2013, at the request of his employer, McClarin Plastics LLC, (hereinafter "McClarin") Tomas Rivera was the assigned operator of the CNC machine at the McClarin plant located at 15 Industrial Drive, Hanover, PA 17331.

18. At the time of the incident, Tomas Rivera was standing in close proximity to the CNC when suddenly and unexpectedly he was struck in the head by the rotating bit on the head of the CNC.

19. As a result of the foregoing incident, Tomas Rivera sustained severe and permanent injuries, including but not limited to a holohemispheric subdural hematoma, left skull fracture with midline shift and penetrating traumatic brain injury.

20. As a result of the foregoing incident, Tomas Rivera has incurred medical bills in excess of \$500,000 and Tomas Rivera and will continue to incur additional medical bills for the foreseeable future.

21. As a result of the foregoing incident, Tomas Rivera is disabled from work, has sustained lost wages and a loss of future earning capacity.

22. As a result of the foregoing incident, Tomas Rivera has endured extreme pain, mental anguish, suffering and humiliation and will likely continue to experience pain, suffering, mental anguish and humiliation in the future.

23. As a result of the foregoing incident, Tomas Rivera has suffered memory and speech deficits which are likely to be permanent.

24. As a result of the foregoing incident, Tomas Rivera has suffered permanent scarring on his head.

25. As a result of the foregoing incident, Tomas Rivera has suffered a loss of life's enjoyment and a loss of the ability to live independently and he will continue to suffer loss of life's enjoyment and will require assistance in completing basic activities of daily living for the foreseeable future.

**COUNT I – NEGLIGENCE**  
**TOMAS RIVERA V. DIVERSIFIED MACHINE SYSTEMS INC.**

26. Plaintiff incorporates herein by reference the allegations set forth in the above paragraphs as though more fully set forth at length.

27. The incident described above was caused solely by the negligent and careless acts of DMS, including, but not limited to the following:

- a. failing to design, manufacture and/or sell the CNC in a manner that would allow it to be operated safely during its normal and/or anticipated use and operation;
- b. designing, manufacturing and/or selling the CNC without any barrier or sensor to prevent the machine from operating when a person is within reach of the point of operation;

- c. designing, manufacturing and/or selling the CNC without warnings and instructions concerning how to safely set up and run the machine to prevent the CNC from operating when a person is in close proximity to the point of operation;
- d. designing manufacturing and/or selling the CNC without warnings and instructions concerning the size and shape and location of the zone of danger wherein an operator may be exposed to hazardous and life-threatening conditions posed by automatically functioning moving mechanical parts and that measures must be taken to prevent the machine from running when an individual is in the danger zone;
- e. designing manufacturing and/or selling the CNC without warnings and instructions that the CNC lacked available safeguards to prevent the CNC from operating when a person is in close proximity to the CNC point of operation;
- f. designing, manufacturing and/or selling the CNC without a readily accessible emergency stop device to allow the operator to quickly stop the device in the event that the machine point of operation unexpectedly comes in close proximity to the operator or is otherwise in a position that is likely to cause harm or is causing harm to the operator;
- g. designing, manufacturing and/or selling the CNC such that it deviated from standard industry design in that it did not include protective gates or pressure sensitive safety mats for the protection of people working in and around the machine;
- h. failing to provide adequate instructions and warnings concerning the substantial risk of serious harm that could result during the normal operation of the CNC.

28. As a result of the negligence of Defendant DMS as successor to Motionmaster Inc., Tomas Rivera suffered severe and permanent injuries as set forth more fully above.

**WHEREFORE**, Tomas Rivera requests that judgment be entered in his favor and against Diversified Machine Systems Inc. in an amount in excess of the arbitration limits of this Court together with such interest, cost and fees as the Court may allow.

**COUNT II – STRICT LIABILITY**  
**TOMAS RIVERA V. DIVERSIFIED MACHINE SYSTEMS INC.**

48. Plaintiff incorporates herein by reference the allegations set forth the above paragraphs as though more fully set forth at length.

49. The CNC was designed, manufactured and/or sold by Motionmaster Inc..

50. Defendant DMS is the successor business to Motionmaster Inc.

51. The CNC was designed, manufactured and/or sold in an unreasonably dangerous and defective condition in that it did not include any barrier or sensor to prevent the machine from operating when a person is within reach of the point of operation.

52. The CNC was designed, manufactured and/or sold in an unreasonably dangerous and defective condition in that did not include any warnings or instructions relating to how to set up and/or run the CNC in a manner that would prevent the CNC from operating when a person is in close proximity to the point of operation.

53. The CNC was designed, manufactured and/or sold in an unreasonably dangerous and defective condition, including the following:

- a. it did not include any warnings or instructions that the CNC lacked available safeguards to prevent the CNC from operating when a person is in close proximity to the CNC;



- b. it did not include any warnings or instructions concerning the size and shape of the zone of danger wherein an operator may be exposed to hazardous and life-threatening conditions posed by automatically functioning moving mechanical parts and that measures must be taken to prevent the machine from running when an individual is in the danger zone;
- c. the CNC lacked a readily accessible emergency stop device to quickly stop the machine in the event that the point of operation unexpectedly comes in close proximity to the operator or is otherwise in a position that is likely to cause harm or is causing harm to the operator;
- d. designing, manufacturing and/or selling the CNC such that it deviated from standard industry design and safety features in that it did not include protective gates or pressure sensitive safety mats for the protection of people working in and around the machine;
- e. failing to provide adequate instructions and warnings concerning the substantial risk of serious harm that could result during the normal operation of the CNC and the availability of components that could eliminate the risk of serious harm.

54. Tomas Rivera relied upon the Defendant to design, manufacture and/or sell the CNC in a condition that was not defective and unreasonably dangerous and to provide sufficient instructions and warnings to prevent serious injuries from occurring during the operation of the machine as a result of the operator coming into contact with moving parts on the machine.

55. Due to its defective and unreasonably dangerous condition, the CNC was an immediate hazard to persons operating or working in close proximity to the CNC

56. As a direct and proximate result of the defective and dangerous condition of Defendant's product, Tomas Rivera sustained damages as set forth more fully above.

**WHEREFORE**, Tomas Rivera requests that judgment be entered in his favor and against DMS Manufacturing, LLC in an amount in excess of the arbitration limits of this Court and such interest, cost and fees as the Court may allow.

**COUNT III – BREACH OF WARRANTY**  
**TOMAS RIVERA V. DMS MANUFACTURING LLC**

57. Plaintiff incorporates herein by reference the allegations set forth in the above paragraphs as though more fully set forth at length.

58. Motionmaster Inc. expressly and/or impliedly warranted that the CNC was of merchantable quality, fit, safe and in proper condition for the ordinary use for which the product was designed and intended to be used.

59. In using the CNC, Tomas Rivera relied upon Defendant's skill and judgment and implied warranty of merchantability as well as upon the express warranties made by the defendant.

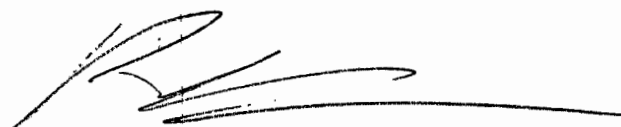
60. The CNC was not of merchantable quality and was unfit and unsafe for the ordinary purposes for which it was intended.

61. By reason of the foregoing, Tomas Rivera suffered damages and losses as described more fully above.

**WHEREFORE,** Tomas Rivera requests that judgment be entered in his favor and against DMS Manufacturing, LLC in an amount in excess of the arbitration limits of this Court and such interest, cost and fees as the Court may allow.

**DEVINE TIMONEY LAW GROUP**

**BY:**



PATRICK C. TIMONEY, ESQUIRE  
PA BAR ID: 67020  
ATTORNEYS FOR PLAINTIFF  
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Dated: January 29, 2019